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| 10/604,780 | 08/15/2003 | Jesse J. Williams | 71189-1501 | 1779 |
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| MCGARRY BAIR PC | | | DOUYON, LORNA M | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/604,780 | Applicant(s) WILLIAMS ET AL. | |
| | Examiner Lorna M. Douyon | Art Unit 1751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49, 51, 52, 54-59 and 87-114 is/are pending in the application.
- 4a) Of the above claim(s) 1-48, 87-93 and 100-114 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49, 51-52, 54-59, 94-99 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This action is responsive to the amendment filed on July 17, 2007.
2. Claims 1-49, 51-52, 54-59, 87-114 are pending. Claims 50, 53, 60-86 have been cancelled. Claims 1-48, 87-93 and 100-114 are withdrawn from consideration.
3. All previous prior art rejections are withdrawn.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 49, 51, 52, 54, 96-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin et al. (US Patent No. 3,488,287), hereinafter "Seglin".

Seglin teaches dispensers and peroxide-soap compositions which are used to produce warm lather (see col. 1, lines 27-29; 62-63). Although the warm lather is used as a shaving lather, it could also be used to provide other types of warm lathers such as warm shampoo lathers (see col. 2, lines 10-15). Different dispensers such as those shown in Figures 1-4 can be used (see Figures 1-4). In Figure 1, the peroxide storage reservoir 6, peroxide measuring chamber 7 and other parts of the dispenser which are in contact with hydrogen peroxide should be constructed of materials which do not cause decomposition of hydrogen peroxide, and suitable materials include plastic, plastic coated metal, stainless steel and aluminum (see col. 2, line 69 to col. 3, line 3).

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Rather than a piston arrangement as in Figure 2, an aerosol-type dispenser in which plunger 20 activates suitable pressure release valves could be employed, and in this case the peroxide and soap components will contain a nominal amount of a low boiling inert propellant such as a chlorofluorocarbon (see col. 4, lines 4-10). A dispenser as in Figure 3 could also be an aerosol-type container having a pressure release valve (see col. 4, lines 20-42). Peroxide-soap compositions which are suitable for use in embodiment of Figure 3 are those which comprise about 5-30% by weight non-ionic detergent, about 30-94% water (which is understood to be deionized), and about 1-25% hydrogen peroxide (100%) (see col. 4, line 75 to col. 5, line 4), and may also contain other ingredients including 0-15% by weight of polyol humectants (which may read on anti-soil protectants) such as ethylene glycol, diethylene glycol; thickening agents (which reads on stabilizer), skin soothers and perfumes (see col. 5, lines 28-45). The density of the lather can be further varied in a number of ways, and it can be decreased by adding an inert propellant such as trichlorofluoromethane thereby increasing the volume of gases available for lathering (see col. 7, lines 8-26). Seglin, however, fails to specifically disclose a peroxide-soap composition in an aerosol-type dispenser wherein the inner surface is made of uncoated aluminum.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare an aerosol-type dispenser containing peroxide-soap composition in a dispenser made of aluminum because Seglin teaches in col. 2, line 69 to col. 3, line 3 that the parts of the dispenser which are in contact with hydrogen

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peroxide should be constructed of materials which do not cause decomposition of hydrogen peroxide, and one suitable material includes aluminum.

6. Claims 55-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin as applied to the above claims, and further in view of Hart et al. (US Patent No. 3,970,584), hereinafter "Hart".

Seglin teaches the features as described above. However, Seglin fails to specifically disclose a dip tube being made of a thermoplastic material such as an olefin polymer.

Hart teaches a similar package wherein the dip tube is made from polyethylene (see col. 5, line 38).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a dip tube made from polyethylene because it is shown from Hart that dip tubes of said material is common in a similar package.

7. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin as applied to the above claims, and further in view of Miles (US Patent 3,722,753).

Seglin teaches the features as described above. However, Seglin fails to specifically disclose the valve made of nylon.

Miles teaches a similar package wherein the valve is made of nylon (see col. 3, lines 65-67).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a valve made of nylon in the container of Seglin because it is shown by Miles that said material is useful as a valve in a similar package.

8. Claims 58-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin and Miles as applied to claim 57 above, and further in view of Barger et al. (US Patent No. 5,421,492), hereinafter "Barger '492".

Seglin and Miles teach the features as described above. However, the combination of reference fails to specifically disclose the valve containing a spring that is made from stainless steel and the diameter of the orifice.

Barger '492 teaches a similar package wherein the valve containing a spring is made of stainless steel (see col. 5, lines 34-50), and a dispensing passage 19 (see Figures 3 and 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a spring made of stainless steel in the container of Seglin and Miles because, not only is a stainless steel spring in the valve a common material used in similar package as shown by Barger '492, but also, said material is resistant to corrosion. With respect to the diameter of the dispensing passage, it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the diameter of the orifice through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine

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experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

9. Claim 94 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin and Hart as applied to claim 55 above, and further in view of Barger et al. (US Patent No. 5,921,447), hereinafter "Barger '447".

Seglin and Hart teach the features as described above. However, the combination of reference fails to specifically disclose the gasket made of ethylene propylene diene terpolymer.

Barger '447 teaches a similar package wherein the gasket is made of ethylene propylene diene (see col. 10, lines 46-48).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a gasket made of ethylene propylene diene terpolymer in the container of Seglin and Hart because it is shown by Barger '447 that said material is useful as a gasket in a similar package.

10. Claim 95 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin as applied to the above claims, and further in view of Spitzer et al. (US Patent No. 3,970,219), hereinafter "Spitzer".

Seglin teaches the features as described above. However, Seglin fails to specifically disclose a container made of anodized aluminum.

Spitzer teaches a similar package wherein the container is made of anodized aluminum (see col. 6, lines 21-24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a container made of anodized aluminum because it is shown from Spitzer that containers of said material is common in a similar package.

11. Claim 99 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seglin as applied to the above claims, and further in view of Lauwers et al. (US Patent No. 6,021,926), hereinafter "Lauwers".

Seglin teaches the features as described above. Seglin, however, fail to disclose the pressure of the chamber.

Lauwers, an analogous art, teaches an aerosol package wherein the pressure inside the container created by the gaseous propellant is preferably at least 5 bar (72.5 psi) at 20°C (see col. 6, lines 32-54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the pressure inside the container of Seglin to be at least 5 bar or 72.5 psi because it is known from Lauwers that similar aerosol package provide a pressure as those recited.

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Response to Amendment

12. The declaration filed July 17, 2007 is moot in view of the new ground of rejections above.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference is considered cumulative to or less material than those discussed above.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Lorna M. Douyon/
Primary Examiner
Art Unit 1751

LMD
9-29-07